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PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

SAMUEL BROWN,

Petitioner-Appellant,

v.

WILLIAM A. PERRILL,

Respondent-Appellee.

No. 97-1186
(D.C. No. 96-D-2096)
(District of Colorado)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **PORFILIO** and **MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

We hold the district court did not err in dismissing without prejudice appellant's habeas corpus petition. We **AFFIRM** for the reasons stated by the district court in its order adopting the findings and recommendations of the magistrate judge. The motion to proceed without prepayment of fees is **GRANTED**. The mandate shall issue forthwith.

ENTERED FOR THE COURT

John C. Porfilio
Circuit Judge